Jurisdictional Statement

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No. 81 6220

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

ROGER ALDWORTH BEACH, Appellant,

v.

THE FLORIDA BAR, Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether Article II, Section 5 of the Integration Rule of the Florida Bar when used by the Supreme Court of Florida as the basis for the Court's order of July 27, 1977, authorizing appellant's suspension from the practice of law in the State of Florida was violative of appellant's rights under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States because the law of the State of Florida mentioned in Article II, Section 5 of the Integration Rule of the Florida Bar was not followed and appellant was not allowed any of those procedures inherent in the principle of due process of law with which he could have defended himself against the outrageous and scurrilous charge of mental incompetency and a possible continuation of a heinous incarceration in a state mental hospital.

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October Term, 1981

ROGER ALDWORTH BEACH, Appellant,

v.

THE FLORIDA BAR, Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

Roger Aldworth Beach, the appellant, appeals from the denial of appellant's motion by the Supreme Court of Florida, dated November 17, 1981, which did not vacate and set aside an order issued by the Supreme Court of Florida on July 27, 1977, which suspended appellant from the practice of law in the State of Florida.

Pursuant to Florida Rule of Appellate Procedure 9.330, appellant could not in good faith file a motion for rehearing of the order of November 17, 1981, issued by the Supreme Court of Florida because that Court did not indicate that it had overlooked or misapprehended any point of law or fact which are the qualifications for a motion for rehearing as are stated in the rule of appellate procedure.

Therefore, the Court's order of November 17, 1981, which denied appellant's motion requesting that the Court vacate and set aside its earlier order of July 27, 1977, suspending appellant from the practice of law in the State of Florida, is a final judgment of the matter. There are no further legal procedures which appellant can take with respect to the order of July 27, 1977, issued by the Supreme Court of Florida, which would make it unnecessary to file this appeal in the Supreme Court of the United States.

OPINIONS BELOW

The order of the Supreme Court of Florida issued on November 17, 1981, which denied appellant's motion to vacate and set aside the Court's earlier order of July 27, 1977, pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar, suspending appellant from the practice of law in the State of Florida appears in the appendix hereto. See App. 1a, The Florida Bar, Re: Roger A. Beach, Case No. 51,779, Supreme Court of Florida.

The order of the Supreme Court of Florida issued on July 27, 1977, pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar, suspending appellant from the practice of law in the State of Florida appears in the appendix hereto. See App. 2a, The Florida Bar, Re: Roger A. Beach, Case No. 51,779, Supreme Court of Florida.

The order of May 12, 1977, in the case of State of Florida v. Roger Beach, CF 77-1170, issued by Judge Marvin U. Mounts Jr., of the Circuit Court of the Fifteenth Judicial Circuit of Florida, appears in the appendix hereto. This order of May 12, 1977, was used by the Supreme Court of Florida as the basis of the Court's authority pursuant to Article II, Section 5 of the Integration

Rule of the Florida Bar to suspend appellant from the practice of law in the State of Florida. See App. 3a-4a.

JURISDICTION

The judgment of the Supreme Court of Florida suspending appellant from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar was entered on July 27, 1977. See App. 2a, infra. The proceedings in the Supreme Court of Florida concerning the judgment were entirely ex parte in nature. The appellant was not informed beforehand that he was to be suspended from the practice of law, and he knew nothing of the judgment of the Supreme Court of Florida until after it had been entered.

A motion requesting that the Supreme Court of Florida vacate and set aside its order of July 27, 1977, was entertained by the Court, and the Court denied the motion by a 5 to 1 vote without opinion on November 17, 1981. See App. 1a, infra.

This appeal of the order of November 17, 1981, issued by the Supreme Court of Florida in the case of The Florida Bar, Re: Roger A. Beach, Case No. 51,779, is being docketed in the Supreme Court of the United States within 90 days from the issuance of the order. This appeal, as has been indicated, concerns the denial by the Supreme Court of Florida of appellant's motion requesting that the Supreme Court of Florida vacate and set aside its earlier order of July 27, 1977, pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar suspending appellant from the practice of law in the State of Florida.

The jurisdiction of the Supreme Court of the United States is being invoked under 28 U.S.C. § 1257(2). The appellant also relies

upon the decisions of Lathrop v. Donohue, 367 U.S. 820 (1961), and In re Griffiths, 413 U.S. 717 (1972), as a basis for this appeal.

CONSTITUTIONAL PROVISION, STATUTORY PROVISIONS, AND SPECIFIC SECTIONS OF THE INTEGRATION RULE OF THE FLORIDA BAR

Fourteenth Amendment, United States Constitution:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Chapter 394, Florida Statutes:

Section 394.467 Involuntary placement

(1) Criteria. -

(a) A person who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily hospitalized pursuant to such finding if he is mentally ill and, because of his illness, is manifestly dangerous to himself or others.

(b) Any other person may be involuntarily placed if he is mentally ill and, because of his illness, is:

1. Likely to injure himself or others if allowed to remain at liberty, or

2. In need of care or treatment which, if not provided, may result in neglect or refusal to care for himself, and such neglect or refusal poses a real and present threat of substantial harm to his well-being.

Chapter 394, Florida Statutes:

Section 394.467 Involuntary placement

(2) Admission to a treatment facility. - A patient may be involuntarily placed in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted for examination or evaluation. When a patient is not an inpatient in a receiving facility, the administrator of a designated receiving facility may make a recommendation for involuntary placement of a patient who has been given an examination, evaluation, or treatment by staff of the receiving facility or a private mental health professional. The hearing may be waived by express and informed consent in writing by the patient. The recommendation must be supported by the opinions of two mental health professionals, at least one of whom shall be a physician, who have personally examined the patient within the preceding 5 days that the criteria for involuntary placement are met. . . . Laws of Florida, 1981; See App. 5a.

Florida Rules of Criminal Procedure

Rule 3.210. Insanity

(a) At Time of Trial.

(1) If before or during the trial the court, of its own motion, or upon motion of counsel for the defendant, has reasonable ground to believe that the defendant is insane, the court shall immediately fix a time for a hearing to determine the defendant's mental condition. The defendant shall designate his attorney to serve as his representative under Fla.Stat. ¢ 394.459(11), F.S.A., in the event the defendant is found mentally incompetent. The court may appoint not exceeding three disinterested qualified experts to examine the defendant and to testify at the hearing as to his mental condition. Other evidence regarding the defendant's mental condition may be introduced at the hearing by either party.

(2) If the court decides that the defendant is sane, it shall proceed to trial.

(3) If the court decides that the defendant is insane, it shall commit him or her to the Division of Mental Health for hospitalization under the provisions of Fla.Stat. ¢ 394.467, F.S.A. . . . Laws of Florida, 1973; See App. 5a.

Article II, Section 5. Integration Rule of the Florida Bar:

A lawyer who has been adjudged insane or mentally incompetent or hospitalized under the Florida Mental Health Act shall be suspended from the practice of law. If an order of restoration is entered by a court having jurisdiction or the lawyer is discharged from hospitalization under the Florida Mental Health Act, he may apply to the Board of Governors for reinstatement on the roll of attorneys.

Article XI. Rules of Discipline. Integration Rule of the Florida Bar:

The exclusive jurisdiction of the Supreme Court over the discipline of persons admitted to the practice of law shall be administered in the following manner subject to the supervision and review of the court.

Article XI, Rule 11.01(4). Integration Rule of the Florida Bar: See App. 8a.

Article XI, Rule 11.04(1). Grievance Committee Function and Procedure. Integration Rule of the Florida Bar: See App. 8a.

Article XI, Rule 11.04(3). Grievance Committee Function and Procedure. Integration Rule of the Florida Bar: See App. 8a-9a.

Article XI, Rule 11.06. Trial by Referee. Integration Rule of the Florida Bar: See App. 9a.

Article XI, Rule 11.09. Review by Supreme Court. Integration Rule of the Florida Bar: See App. 9a-10a.

Article XI, Rule 11.10. Discipline by Supreme Court. Integration Rule of the Florida Bar: See App. 10a.

STATEMENT OF THE CASE

The appellant, Roger Aldworth Beach, was admitted to the practice of law in the State of Florida in May 1975. Appellant

resided in Riviera Beach, Florida, while practicing law in North Palm Beach, Florida; West Palm Beach, Florida; and, Riviera Beach, Florida.

On May 7, 1977, while attempting to find a workmen's compensation client who had been badly burned in a construction accident, appellant was given a gun (the gun was actually tossed to appellant) by a man in a group of about five men. The group of men had been standing on a street corner and appellant had approached them thinking that he had seen his client among them.

After appellant had observed the group of men quickly leaving the area, he tried to find a policeman to whom he could give the gun. However, there was none around. Further, appellant did not see any as he drove through the City of West Palm Beach, Florida. Therefore, he drove to the nearest police station.

After making his second attempt to walk across the parking lot to the police station (Appellant had become so nervous while first attempting to walk across the parking lot to the police station that he had gotten back inside his car and had driven back through the City of West Palm Beach, Florida, looking again for a policeman.) appellant was hailed by a young man in a green suit. The man motioned appellant over to the front door of the building which appellant later became aware of as the federal building. The man held the door open and asked appellant to go inside. Once appellant had gotten barely inside the front door, he was arrested by three or four men who held guns to his head. It was the first time that appellant had ever been arrested!

About six hours after his arrest, appellant, among other things, was told that he had been arrested for carrying a concealed weapon. Minutes later he was taken to the Palm Beach County Jail. A day or two later, he was visited in the jail by Doctor Rufus Vaughn M.D.

This physician had been made a court-appointed physician by Judge Marvin U. Mounts Jr., of the Circuit Court of the Fifteenth Judicial Circuit of Florida, the judge who was subsequently to illegally involuntarily commit appellant to the Department of Health and Rehabilitative Services of the State of Florida - the state agency which assigned appellant to state mental hospitals on three separate occasions after Judge Mounts had issued his three illegal orders for appellant's involuntary commitments.

It was Doctor Vaughn's purpose, when he visited appellant in the Palm Beach County Jail on or about May 10, 1977, to ascertain whether or not appellant was competent enough to stand trial. After two very brief visits with appellant at the jail, each visit lasting about five minutes, it was Doctor Vaughn's opinion that appellant was not competent enough to stand trial. Doctor Vaughn communicated this fact to Judge Mounts. The judge thereupon, on May 12, 1977, without giving appellant any notice or any adequate hearing and based solely upon Doctor Vaughn's opinion, involuntarily committed appellant to the Department of Health and Rehabilitative Services of the State of Florida. That state agency, always acceding to the judge's wishes, subsequently assigned appellant to Florida State Hospital. Appellant was incarcerated there on May 16, 1977. He remained in that hospital's forensic unit until August 23, 1977.

Appellant's main contention and the basis for this appeal is that he was never legally adjudged mentally incompetent and never legally involuntarily committed to the Department of Health and Rehabilitative Services of the State of Florida because he was only examined by Doctor Rufus Vaughn M.D., and the law of the State of Florida, at that time, required that appellant be examined by two physicians - not one physician - before he was to be legally involuntarily committed to the Department of Health and Rehabilitative

Services of the State of Florida or legally declared mentally incompetent for that matter. Appellant could not have been legally involuntarily committed to the Department of Health and Rehabilitative Services at that stage in his legal proceedings unless he had been legally adjudges mentally incompetent.

The relevant portion of the law governing appellant's situation at that time in 1977 is the following:

> Chapter 394, Florida Statutes:
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> Section 394.467 Involuntary hospitalization
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> * * *
>
> (2) Admission to a treatment facility. - A patient may be hospitalized in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted for examination or evaluation. . . . The recommendation must be supported by the opinions of two physicians who have personally examined the patient within the preceding five days that the criteria for involuntary hospitalization are met. . . .

At no time before he was incarcerated in Florida State Hospital on May 16, 1977, was appellant ever examined by any one other than Doctor Vaughn who didn't, himself, give appellant much of an examination. Judge Marvin U. Mounts Jr. just about admits this in his order of May 12, 1977, involuntarily committing appellant to the Department of Health and Rehabilitative Services of the State of Florida when he says: "The psychiatric evaluation by Dr. Rufus Vaughn is received into evidence and the parties have waived cross examination and authorized the Court to consider the report. . . ." The judge means that this is the only psychiatric evaluation that he considered

before he ordered appellant adjudged mentally incompetent and involuntarily committed to the Department of Health and Rehabilitative Services. See App. 3a. Therefore, neither the adjudgment of mental incompetency or the involuntary commitment were legal. Consequently, appellant's suspension from the practice of law by the Supreme Court of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar was illegal because the Supreme Court used Judge Mounts' order of May 12, 1977, as the basis for appellant's suspension from the practice of law. See App. 2a; See Juris. Statement, p.5-6. Appellant never really fell into the category of those lawyers who have been adjudged insane or mentally incompetent or hospitalized under the Florida Mental Health Act because the Florida Mental Health Act was never followed. See Juris. Statement, p.5-6. Appellant was not examined by two physicians before he was adjudged mentally incompetent and hospitalized. Therefore, despite what Judge Mounts may say, appellant's so-called mental incompetency and hospitalization are in effect a nullity. Appellant does indeed have the right to have his suspension from the practice of law by the Supreme Court of Florida on July 27, 1977, to be declared a nullity, and Appellant has the right to be on the roll of attorneys actively practicing law. See App. 2a.

If one will look at page 5 of this jurisdictional statement, he will see a portion of Rule 3.210 of the Florida Rules of Criminal Procedure stated there. Although appellant has indicated that the portion of Rule 3.210 of the Florida Rules of Criminal Procedure is from the 1973 laws of Florida, which is all that appellant could obtain because of the harsh circumstances under which he has been forced to live, the important thing to note is that Rule 3.210 says that one shall be committed to the Division of Mental Health

for hospitalization under the provisions of Fla.Stat. § 394.467, F.S.A. Although this is a part of the law as it was in the State of Florida during the year 1973, the law still provided for the hospitalization of persons under the provisions of Fla.Stat. § 394.467, F.S.A., during the year 1977. At the present time, or at least as late as 1981, Rule 3.210 of the Florida Rules of Criminal Procedure provided that the defendant (prospective patient) shall be examined by no more than three nor fewer than two experts prior to the date of the hearing to determine the defendant's mental contention. See App. 6a. Therefore, one can assume, which is in reality the truth, that a defendant or prospective patient had to be examined by two persons before he could be legally adjudged mentally incompetent or involuntarily committed to the Department of Health and Rehabilitative Services of the State of Florida. This has been the actual state of affairs with respect to Florida Law at least since 1973. However, again, appellant states that he was examined by only one person - Doctor Rufus Vaughn M.D. - before he, appellant, was adjudged mentally incompetent and involuntarily hospitalized in a state mental hospital. This was illegal! And, appellant should not have been suspended from the practice of law in the State of Florida because it happened!

In support of appellant's contention that he was never legally adjudged mentally incompetent or legally involuntarily committed to the Department of Health and Rehabilitative Services, appellant states that he was denied the right to an independent expert examination by a mental health professional pursuant to Florida Statute 394.467(3). This is the language in the statute as it was in 1981. At the time that appellant was illegally adjudged mentally incompetent and illegally involuntarily committed to the Department of Health and Rehabilitative Services in 1977, appellant had the

right to an independent psychiatric or psychological examination which is essentially about the samething as having an independent expert examination by a mental health professional. In appellant's opinion, the term "mental health professional" is a broad term meaning more than an independent psychiatric or psychological examination.

By denying appellant the right to independent experts, Judge Mounts refused to allow appellant due process of law because appellant had no witnesses to rebut the opinion of Doctor Vaughn who was the judge's own court-appointed physician. See App. 3a-4a. It is not to be inferred from Judge Mounts' order of May 12, 1977, that appellant gave up his right to be examined by independent experts. Further, it is not to be inferred from the order of May 12, 1977, that appellant gave up any of his constitutional rights. The lawyer mentioned on the second page of the order of May 12, 1977, may have given up appellant's rights, but appellant gave up nothing. Appellant vigorously objected to this lawyer named Leon St. John representing him, but Judge Mounts forced this man on appellant anyway despite appellant's objections for the court record which should be in the court record at this time. See App. 4a.

From a source unknown to appellant, the Supreme Court of Florida received information that appellant had been declared mentally incompetent by Judge Mounts on May 12, 1977. Despite the fact that the Supreme Court of Florida was put on "notice" that appellant had not been legally adjudicated mentally incompetent by the order of May 12, 1977, because of the reference by Judge Mounts to the fact that he had considered the report from Doctor Rufus Vaughn M.D. as the basis for declaring appellant mentally incompetent, the Supreme Court of Florida suspended appellant from the practice of law in the

State of Florida by order on July 27, 1977. See App. 2a. In the order of July 27, 1977, there is reference by the Supreme Court of Florida to the effect that Judge Marvin U. Mounts had adjudicated appellant mentally incompetent on May 12, 1977. Therefore, it can be inferred that Judge Mounts' order was the basis for the Supreme Court of Florida to suspend appellant from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar. See App. 2a.

It must be noted that appellant had no notice that he was going to be suspended from the practice of law in the State of Florida by the Supreme Court of Florida. Indeed, appellant had no hearing on the issue of whether or not he should be suspended from the practice of law. This seems to be in conformity with Article II, Section 5 of the Integration Rule of the Florida Bar, however, it does not seem to be in conformity with Article XI, Rule 11.01(4) of the Integration Rule of the Florida Bar which is concerned with placing attorneys on the inactive list for incapacity not related to misconduct. See App. 8a. An attorney who is accused of being mentally ill under Article XI, Rule 11.01(4) of the Integration Rule of the Florida Bar has all those procedures inherent in the constitutional guarantee of due process of law as should be his according to the Fourteenth Amendment to the United States Constitution. See App. 8a-10a. Appellant has listed some of those rules in the Integration Rule of the Florida Bar which show the protection of the due process rights of those accused of being mentally ill under Article XI, Rule 11.01(4). They seem to be truly impressive. However, they are a far cry from what one gets if he is adjudged insane or mentally incompetent (which appellant really believes means the samething as being adjudged insane) or hospitalized under the Florida Mental Health Act. If one is an

attorney and treated in the manner that appellant indicated in his last sentence, he gets no due process rights whatsoever. He is just suspended from the practice of law in the State of Florida by the Supreme Court of that state. If he is like appellant, he will not know of his suspension from the practice of law until he gets the order from the Supreme Court. See Juris. Statement, p.5-6; App. 8a-10a. This is the way that he is treated under Article II, Section 5 of the Integration Rule of the Florida Bar and appellant thinks that it is unfair! (Compare Article II, Section 5 of the Integration Rule of the Florida Bar on page 5 and page 6 of this Jurisdictional Statement with the Rules under Article XI of the Integration Rule of the Florida Bar on page 8a through 10a of the appendix to this Jurisdictional Statement. It should be noted that Article II, Section 5 stands alone! There are no provisions to it which are like those to Article XI.)

At the first real opportunity that appellant had, he moved the Supreme Court of Florida to vacate and set aside its order of July 27, 1977, which suspended appellant from the practice of law in the State of Florida. This first real opportunity did not occur until the Fall of 1981, more than four years after appellant had suspended from the practice of law. At that time, appellant took the unusual procedure - although a procedure designed to clarify appellant's situation for the Supreme Court of Florida - of attaching his motion to vacate and set aside the order of July 27, 1977, suspending him from the practice of law, to a motion in another case requesting that the Supreme Court of Florida immediately issue an order to show cause or a writ of habeas corpus. See App. 12a-18a. The other case concerned the same matter that was before the Supreme Court of the United States in Case No. 81-5612 in that Court - an effort by appellant to have Judge Lewis Kapner

of the Circuit Court of the Fifteenth Judicial Circuit of Florida enjoined from exerting any further jurisdiction over appellant. See In Re Roger Aldworth Beach, Case No. 81-5612, U.S. Supreme Court; Roger Aldworth Beach v. Lewis Kapner, Case No. 60,637, Supreme Court of Florida.

In appellant's motion requesting that the Supreme Court of Florida issue an order to show cause or a writ of habeas corpus in the case of Roger Aldworth Beach v. Lewis Kapner, Case No. 60,637, the appellant illustrated for the Supreme Court of Florida that he, the appellant, had no valid mental illness. See App. 12a-15a. According to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders published in 1980, there was no acceptable definition of the mental illness that the appellant was suppose to have - Schizophrenia schizoaffective type mental illness. The following quote on page 13a of the appendix to this jurisdictional statement explains what appellant means:

> "The DSM-III approach to defining Schizoaffective Disorder is unique in that eventually a consensus could only be reached on the inability to reach a consensus on a specific definition. Thus Schizoaffective Disorder is the only specific category in DSM-III without diagnostic criteria. The task force accepted the recommendation of a special committee that it appointed to review the category that there was no definition of the condition that seemed acceptable to most clinicians at the present time." Spitzer, Williams & Skodol, DSM-III: The Major Achievements and an Overview: Am.J. Psychiat. 137:2, 151-163, p.153, Feb.1980.

The term DSM-III means the third edition of the Diagnostic and Stastical Manual. The development of this manual involved over

800 clinicians. If they could not agree on a definition for the type of mental illness that appellant supposedly had, then how could appellant be validly suspended from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar when the judge in appellant's state court case, or the Justices of the Supreme Court of Florida, for that matter, could not even make a good guess as to what type of mental illness afflicted appellant? See U.S. Supreme Court, Case No. 81-5612, In Re Roger Aldworth Beach, Reply, exhibit 1, which states on the first page of the exhibit that Roger Aldworth Beach is suffering from the disease known as schizophrenia schizoaffective type mental illness.

Appellant hoped by proving to the Supreme Court of Florida that he, appellant, had no valid mental illness that the Supreme Court of Florida would issue a writ of habeas corpus freeing appellant from the jurisdiction of Judge Lewis Kapner who in reality had no jurisdiction over appellant because appellant was not validly mentally ill. Appellant's so-called mental illness was the basis for Judge Kapner exerting jurisdiction over appellant by way of Florida Statute 394.467 which is mentioned on page 4 and 5 of this jurisdictional statement as well as page 6a of its appendix. If appellant had no valid mental illness, then Florida Statute 394.467 would not apply to his situation and he would be free from Judge Kapner's influence.

Essentially, the motion requesting that the Supreme Court of Florida immediately issue an order to show cause or a writ of habeas corpus was a support for appellant's motion requesting that the Supreme Court of Florida vacate and set aside its order of July 27, 1977, suspending appellant from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the

Florida Bar. Appellant had hoped to convince the Supreme Court of Florida that he could not be validly suspended from the practice of law if he were not validly mentally ill. Not only was there an inability among over 800 clinicians to reach an acceptable definition of appellant's mental illness, but there was also an inability to precisely define the general category of mental illness under which appellant supposedly fell. This comprised what is called "schizophrenia." According to the 1968 edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, the appellant could be suffering from schizophrenia and it didn't matter whether or not he had delusions or hallucinations in order to be suffering from the disease. However, according to the 1980 edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, appellant had to have the delusions or hallucinations or he wasn't suffering from schizophrenia. Further, according to the 1980 edition of the manual, appellant had to have a disturbance or impairment of at least six months or he wasn't suffering from schizophrenia. By the 1968 edition of the manual, appellant could be suffering from schizophrenia if he had a disturbance or impairment of any length of time. See App. 14a.

If the Supreme Court of Florida had believed what appellant had stated in his motion requesting that the Supreme Court immediately issue an order to show cause or a writ of habeas corpus in the case of Roger Aldworth Beach v. Lewis Kapner, Supreme Court of Florida, Case No. 60,637, then appellant hoped that the Court would use the knowledge of the invalidity of appellant's mental illness in reaching a decision favorable to appellant on appellant's motion in the case of The Florida Bar, Re: Roger A. Beach, Case No. 51,779, requesting the Supreme Court of Florida

to vacate and set aside its order of July 27, 1977, suspending appellant from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar. In essence, appellant had proved that the apple was rotten when he proved that he had no valid mental illness. Now he was going to prove that the core was rotten also because he had not been examined by the two physicians required by Florida Statute 394.467(2). See Juris. Statement, p.5; App. 6a.

Appellant stated in his motion requesting that the order of July 27, 1977, be vacated and set aside that he, appellant, had been found mentally incompetent upon the basis of only one physician's opinion. This mental incompetency, of course, was found by Judge Marvin U. Mounts Jr. who adjudicated appellant mentally incompetent in the order of May 12, 1977, in the case of State of Florida v. Roger Beach, CF 77-1170. See App. 16a. Further, appellant stated that he had been denied his right to independent expert examination as provided by Florida Statute 394.467(3). Thus, appellant had been denied his right to due process of law as should have been his according to the Fourteenth Amendment to the United States Constitution. Appellant had not been allowed to present any rebuttal witnesses to the allegation made by the one court-appointed physician who said that appellant was mentally incompetent. See App. 17a.

Finally, appellant stated in his motion requesting that the Supreme Court of Florida vacate and set aside its order of July 27, 1977, suspending appellant from the practice of law that he had been denied his Sixth Amendment right to the effective assistance of counsel. Appellant had objected vigorously against having Leon St. John forced upon him, the appellant, and this objection is almost surely in the court record. The order of

May 12, 1977, causing appellant's first involuntary incarceration in a state mental hospital illustrates how truly poor and ineffective the representation of appellant by Leon St. John really was. Mr. St. John waived cross examination of Doctor Vaughn and allowed appellant to be involuntarily incarcerated in a state mental hospital solely upon the basis of Doctor Vaughn's report in violation of Florida Statute 394.467(2). This is prima facie ineffective representation and a violation of appellant's right to the effective assistance of counsel. Ironically, appellant brought to the attention of the Supreme Court of Florida in the case before that Court entitled Roger Aldworth Beach v. Lewis Kapner, Case No. 60,637, that Leon St. John had withdrawn from appellant's case after he, Leon St. John, had successfully caused appellant's second involuntary incarceration in a state mental hospital pursuant to Judge Marvin U. Mounts Jr.'s order of January 13, 1978. Mr. St. John withdrew from appellant's case on the ground that he had irreconcilable differences with appellant's parents. He left appellant without any representation for more than nine months.

Regardless of the fact that appellant had presented what he thought was brief although devastating proof that he had been denied his constitutional right to due process of law, the Supreme Court of Florida by a 5 to 1 vote denied appellant's motion requesting that the Court vacate and set aside its order of July 27, 1977, suspending appellant from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar. This denial of appellant's motion was by court order and the date of that order is November 17, 1981. See App. 1a. Incidentally, the Supreme Court of Florida also denied the motion to which appellant's motion requesting that the suspension order be vacated and set aside was attached to.

THE QUESTION IS SUBSTANTIAL

Although the practice of law is a privilege and not a right, appellant's interest in that particular privilege is a "protected interest" within the contemplation of the 'liberty or property' language of the Fourteenth Amendment. Morrissey v. Brewer, 408 U.S. 471, 481 (1972). Appellant's interest in his privilege to practice law is inseparably intertwined with appellant's interest in his reputation, honor, and integrity. Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971). It is also so intertwined with appellant's justifiable expectation of continued entitlement to employment. Slochower v. Board of Education, 350 U.S. 551 (1956). Although the government of the State of Florida is under no obligation to extend this privilege to practice law to appellant, because it has done so it must observe constitutional restraints with regard to the conditions it imposes upon appellant's eligibility to practice law. Sherbert v. Verner, 374 U.S. 398 (1963); Shapiro v. Thompson, 394 U.S. 618 (1969); Graham v. Richardson, 403 U.S. 365 (1971); and, Perry v. Sindermann, 408 U.S. 593 (1972). If it seeks to revoke appellant's privilege to practice law which it essentially does when it suspends him from the practice of law, it must afford him proper procedural protections. Goldberg v. Kelly, 397 U.S. 254 (1970). The appellant has an "entitlement" in his privilege to practice law much like a driver has an "entitlement" in his driver's license. Bell v. Burson, 402 U.S. 535 (1971). Therefore, the government of the State of Florida cannot constitutionally suspend appellant from the practice of law in the State of Florida without according appellant at least a notice and hearing on the issue of whether or not he should be suspended from the practice of law.

In the case of The Florida Bar v. Major, 270 So.2d 7 (1972), the

respondent Major was sent a copy of The Florida Bar's petition to suspend him from the practice of law in the State of Florida because he had been committed for treatment for insanity. No response to the petition sent to Major was received. Therefore, the Supreme Court of Florida suspended Major from the practice of law in the State of Florida saying: "It is therefore ordered that the petition of The Florida Bar to suspend Edmund Carl Major from the practice of law because he has been committed for treatment of insanity as related is hereby granted, subject to any rights he may have under due process and to apply for reinstatement at the proper time and upon proper showing."

Major got his due process rights and appellant got none of his due process rights. The only difference between the two cases is that Major was committed to the Department of Mental Health in the State of Michigan while appellant was committed to the Division of Mental Health in the State of Florida. Major was treated like those who fall under Article XI, Rule 11.01(4) of the Integration Rule of the Florida Bar while appellant was treated like those who fall under Article II, Section 5 of the Integration Rule of the Florida Bar. This is classic invidious discrimination! The State of Florida can't even begin to come up with a rational basis for the difference in treatment afforded Major and appellant. It is ludicrous to say that Major is going to get notice that he is going to be suspended from the practice of law because he is being treated for insanity in Michigan, but appellant is going to get no notice that he is going to be suspended from the practice of law because he is being treated for insanity in Florida. See Juris. Statement, p.5-6; App. 8a.

In The Florida Bar v. Fussell, 179 So.2d 852 (1965), the Supreme Court of Florida said the following which supports appellant's

contention that he was denied due process of law in violation of his rights under the Fourteenth Amendment to the Constitution of the United States:

> "Our Integration Rule recognizes that a license to practice law endows the holder with a conditional privilege and not a vested right. It is nonetheless a valuable privilege which should not be regarded lightly by the lawyer who enjoys it or by those of us who are charged with the supervision of its enjoyment. It is earned and acquired only after an arduous and expensive period of education. It can be retained and employed as a productive source of livelihood only by diligence and an ethical devotion to its responsibilities. In this vein it has characteristics of property which should not be withdrawn by a governing authority save by proper application of traditional concepts of due process. Under our system, no written rule is necessary to prescribe that this contemplates both notice and an opportunity to be heard, before an individual - regardless of his offense - is subjected to the disciplinary exercise of governmental power."

In essence, the Supreme Court of Florida is implying that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights . . . And no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170-171 (1951). Had appellant known that he was to be suspended from the practice of law by the Supreme Court of Florida, he could have informed the Court that he had only been examined by Doctor Rufus Vaughn M.D., which meant that appellant had not been adjudicated mentally incompetent or hospitalized under the Florida Mental Health Act pursuant to Article II, Section 5 of the Integration

Rule of the Florida Bar. Therefore, the Supreme Court of Florida probably would not have suspended appellant from the practice of law. The Florida Bar certainly wouldn't have met the requisite standard of proof of clear and convincing evidence of appellant's mental incompetency. The Florida Bar v. Rayman, 238 So.2d 594, 597 (1970). There was the lack of one more physician, or mental health professional if one wants to use the Laws of Florida as they exist at the present time, who said that appellant was mentally incompetent or at least gave Judge Marvin U. Mounts Jr. enough evidence from which the judge could conclude that appellant was mentally incompetent. The Florida Bar v. Quick, 279 So.2d 4 (1973). Consequently, all the proper intendments would have been in favor of appellant's mental incompetency. Davis v. State Bar of California, 125 P.2d 467, 469 (1942).

The manner in which appellant was suspended from the practice of law by the Supreme Court of Florida explicitly contradicts that Court's philosophy on what the ultimate judgment of discipline must be. In State ex rel. Florida Bar v. Ruskin, 126 So.2d 142, 143 (1961), the Court said that such ultimate judgment of discipline must be one which is: " . . . just to the public and, at the same time, fair to the accused attorney; it should be 'designed to correct any anti-social tendency on the part of the respondent as well as deter others who might tend to engage in like violations . . . ." The words "fair to the accused attorney" are the words which appellant is interested in. Had appellant been placed on the inactive list for incapacity related to mental illness pursuant to Article XI, Rule 11.01(4), appellant would have had all those proceedings that those attorneys receive when they are accused of misconduct. As appellant has indicated on page 13 of this jurisdictional statement, they are quite impressive. See App. 8a-10a.

Appellant would have been investigated by a grievance committee. See App. 8a. Before that grievance committee made any finding of probable cause of appellant's incapacity to practice law because of mental illness, appellant would have been advised in general terms the nature of the conduct which was being investigated. See App. 8a. Appellant would then have been given an opportunity to make a statement personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. Then, if probable cause were found that appellant had a mental illness rendering him incapacited to practice law, appellant would have the right to a trial by referee on the matter. See App. 9a. This would be an adversary proceeding. Thereafter, if necessary, appellant would have the right to have the Supreme Court of Florida review the referee's report. See App. 9a. Finally, the appellant would be subject to the appropriate discipline by the Supreme Court of Florida which has the authority to suspend appellant from the practice of law in the State of Florida. See Article XI, Rule 11.10 of the Integration Rule of the Florida Bar on page 10a of the appendix.

Thus, if appellant had been governed by Article XI, Rule 11.01 (4) of the Integration Rule of the Florida Bar, he would have had his notice of hearing and opportunity to be heard which would have been granted at a "meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 (1965); In re Ruffalo, 390 U.S. 544, 550 (1968). His opportunity to be heard would have been in advance of his suspension from the practice of law. Sniadach v. Family Finance Corp., 395 U.S 337 (1969). And, appellant would not have had to make an advance showing that if he were granted a hearing, he would prevail at the hearing. Coe v. Armour Fertilizer Works, 237 U.S. 413, 424 (1915). In essence, had appellant fallen under Article XI, Rule 11.01(4) of the Integration Rule of the Florida Bar, there would

have been a more responsible determination of whether or not appellant was really mentally incompetent and therefore so incapacitated that he could not practice law. Goldberg v. Kelly, supra at 266-267. As it was, appellant was found by the Supreme Court of Florida to have fallen under Article II, Section 5 of the Integration Rule of the Florida Bar simply because Judge Marvin U. Mounts Jr. said that appellant was mentally incompetent. The Florida Mental Health Act was never followed, and the Supreme Court of Florida never ascertained whether or not the act had been properly applied. It just issued its order of July 27, 1977, suspending appellant from the practice of law. This is a serious violation of due process of law and more! Why deny someone the right to the opportunity to be heard simply because he has been adjudged mentally incompetent under the Florida Mental Health Act, or, in appellant's case, some semblance of the Florida Mental Health Act when someone not adjudged mentally incompetent under the Florida Mental Health Act who is nevertheless found incapable of practicing law because of mental illness gets the right to the opportunity to be heard? See App. 8a. This does not make sense. It is like saying that there is some magic in the Florida Mental Health Act which makes it all right to deny someone due process of law if the Florida Mental Health Act should in some way be associated with his case. Or, in other words, is someone more mentally incompetent because he is under the Florida Mental Health Act than someone else who is not under the Florida Mental Health Act and so mentally ill that he cannot practice law? Therefore, the first person doesn't deserve due process of law while the second person does deserve due process of law? Again, this does not make sense! The person adjudicated mentally incompetent under the Florida Mental Health Act and suspended from the practice of law because of this pursuant to Article II, Section 5 of the

Integration Rule of the Florida Bar is denied the equal protection of the laws. He does not get the same rights as one found incapacited to practice law pursuant to Article XI, Rule 11.01(4) of the Integration Rule of the Florida Bar which gives a person formidable protection of his right to due process of law.

Pursuant to the decision of Lathrop v. Donohue, 367 U.S. 820 (1961), appellant believes that he is properly before the Supreme Court of the United States on appeal pursuant to 28 U.S.C. § 1257(2). Article 5, § 23 of the Florida Constitution was adopted by the voters in the State of Florida in the general election of November 6, 1956. This section of the Florida Constitution gives the Supreme Court of Florida the exclusive jurisdiction over the admission and discipline of attorneys to the legal profession in the State of Florida. Therefore, the order of the Supreme Court of Florida integrating the Florida Bar and creating Article II, Section 5 of the Integration Rule of the Florida Bar is legislative in nature. See Lathrop v. Donohue, supra at 824. In Williams v. Bruffy, 96 U.S. 176 (1877), the Supreme Court of the United States said in construing a jurisdictional provision in the Judiciary Act of 1867, 14 Stat. 385: "Any enactment, from whatever source originating, to which a State gives the force of law is a statute of the State, within the meaning of the clause cited relating to the jurisdiction of this court."

The integration of the Florida Bar like the integration of the Wisconsin Bar bore no resemblance to adjudication. The Supreme Court of Florida's action disposed of no litigation between parties. Rather the court sought to regulate the legal profession by applying its orders to all present members of the Bar and to all persons coming within the described class in the future. As such, the action had the characteristics of legislation. Therefore, it should be concluded

that appellant's appeal is cognizable under 28 U.S.C. § 1257(2) as it was so concluded in Lathrop v. Donohue, supra at 827.

The situation in the case of In Re Griffiths, 413 U.S. 717 (1973) is somewhat more analogous to appellant's situation. In In Re Griffiths, supra, the appellant asserted that the state rule excluding aliens, i.e., persons not citizens of the United States, from the practice of law was unconstitutional. The Supreme Court of the United States noted probable jurisdiction and then later held that the state rule excluding aliens from the practice of law violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

In this appellant's case, the case of Roger Aldworth Beach v. The Florida Bar, the appellant hopes that the Supreme Court of the United States will note probable jurisdiction and then hold that Article II, Section 5 of the Integration Rule of the Florida Bar as applied to appellant violated appellant's right to the due process of law as should have been his under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and, consequently, appellant was not validly suspended from the practice of law in the State of Florida.

WHEREFORE, because of the above reasons, the appellant, Roger Aldworth Beach, requests that the Supreme Court of the United States take jurisdiction of this appeal and decide the question presented in appellant's favor.

Respectfully,

Roger Aldworth Beach

STATE OF Maryland

COUNTY OF Baltimore

I, Roger Aldworth Beach, the appellant in the above case of Roger Aldworth Beach v. The Florida Bar, being first duly sworn under oath, presents that I have read and subscribed to the above jurisdictional statement which I have personally prepared, and I state that the information therein, which I have personal knowledge of, is true and correct, and as to the other matters in the jurisdictional statement, I state that I have a reasonable belief that they are true and correct.

Roger Aldworth Beach

ROGER ALDWORTH BEACH, Appellant

Subscribed and sworn to before me

this 12 day of [illegible], 19[illegible]

[illegible]

Notary Public or other person
authorized to administer oath

Appendix

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

ROGER ALDWORTH BEACH, Appellant,

v.

THE FLORIDA BAR, Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

APPENDIX

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Copy of the order of November 17, 1981, issued by the Supreme Court of Florida which denied appellant's motion that his suspension from the practice of law be vacated and set aside	I
Copy of the order of July 27, 1977, issued by the Supreme Court of Florida which states that appellant is suspended from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar	II
Copy of the order of November 17, 1981, issued by the Supreme Court of Florida which is the order appealed from	III
Copy of the notice of appeal sent to the Supreme Court of Florida and the Executive Director of the Florida Bar together with the certificate of service attached thereto	IV-V

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Copy of letter from the Clerk of the Supreme Court of Florida to the Clerk of the Supreme Court of the United States stating that appellant's notice of appeal was filed in the Supreme Court of Florida on January 13, 1982 VI

Other appended materials:

Copy of the order of November 17, 1981, issued by the Supreme Court of Florida which denied appellant's motion that his suspension from the practice of law be vacated and set aside 1a

Copy of the order of July 27, 1977, issued by the Supreme Court of Florida which states that appellant is suspended from the practice of law in the State of Florida pursuant to Article II, Section 5 of the Integration Rule of the Florida Bar 2a

Copy of the order of May 12, 1977, issued by Judge Marvin U. Mounts Jr. in the case of State of Florida v. Roger Beach, CF 77-1170 which was used by the Supreme Court of Florida as the basis for the issuance of the order of July 27, 1977, which suspended appellant from the practice of law in the State of Florida 3a-4a

Copy of the text of Florida Statute 394.467(1) and Florida Statute 394.467(2) from the Laws of Florida, 1973 . . . . . 6a

Copy of portion of the text of Florida Rule of Criminal Procedure 3.210 from the Laws of Florida, 1981 . . . . 6a

Copy of portions of the text under Article XI of the Integration Rule of the Florida Bar showing the due process procedures in that article 8a-10a

Copy of the motion in the case of Roger Aldworth Beach v. Lewis Kapner, Supreme Court of Florida, Case No. 60,637, to which the appellant had affixed his motion in the case of The Florida Bar, Re: Roger A, Beach, Case No. 51,779, requesting that the Supreme Court of Florida vacate and set aside appellant's suspension from the practice of law in the State of Florida 12a-15a

Copy of the motion in the case of The Florida Bar, Re: Roger A. Beach, Case No. 51,779, requesting that the Supreme Court of Florida vacate and set aside appellant's suspension from the practice of law in the State of Florida . . 16a-18a

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Copy of the order of July 27, 1981, issued by the Supreme Court of Florida which the appellant was attempting to get the Court to reconsider when the appellant filed his motion requesting the Supreme Court of Florida to vacate and set aside appellant's suspension from the practice of law in the State of Florida 19a

I

Supreme Court of Florida

TUESDAY, NOVEMBER 17, 1981

THE FLORIDA BAR, *

Re: ROGER A. BEACH * CASE NO. 51,779

* * * * * * * * * * * * * *

Upon consideration of the Motion Requesting that the Supreme Court of Florida Vacate and Set Aside its Order of July 27, 1977, Which Suspended Petitioner from the Practice of Law in the State of Florida filed by Roger Aldworth Beach,

IT IS ORDERED that said Motion be and the same is hereby denied.

SUNDBERG, C.J., ADKINS, OVERTON, ALDERMAN and McDONALD, JJ., concur
BOYD, J., dissents

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

TC
cc: Mr. Roger Aldworth Beach
Hon. Jim Smith
Hon. Lewis Kapner, Chief Judge

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, JULY 27, 1977

THE FLORIDA BAR *
*
Re: ROGER A. BEACH * CASE NO. 51,779
*
* * * * * * * * * * * * * * *

Roger A. Beach, having been adjudicated mentally incompetent by Circuit Judge Marvin Mounts on May 12, 1977, it is ordered that pursuant to Article II, Section 5, of the Integration Rule of the Florida Bar, Roger A. Beach is hereby suspended from the Florida Bar as of the date of this order.

OVERTON, C.J., ADKINS, BOYD, ENGLAND, SUNDBERG, HATCHETT and KARL, JJ., concur

A True Copy
TEST:

Sid J. White
Clerk, Supreme Court

TC
cc: Elinor P. Smith, Esquire
Mr. and Ms. Beach

Supreme Court of Florida

TUESDAY, NOVEMBER 17, 1981

THE FLORIDA BAR, *
*
Re: ROGER A. BEACH * CASE NO. 51,779
*
* * * * * * * * * * * * * *

Upon consideration of the Motion Requesting that the Supreme Court of Florida Vacate and Set Aside its Order of July 27, 1977, Which Suspended Petitioner from the Practice of Law in the State of Florida filed by Roger Aldworth Beach,

IT IS ORDERED that said Motion be and the same is hereby denied.

SUNDBERG, C.J., ADKINS, OVERTON, ALDERMAN and McDONALD, JJ., concur
BOYD, J., dissents

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

TC
cc: Mr. Roger Aldworth Beach
Hon. Jim Smith
Hon. Lewis Kapner, Chief Judge

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

filed 1/12/82

ROGER ALDWORTH BEACH, APPELLANT,

v. No. 51,779

THE FLORIDA BAR, APPELLEE.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Roger Aldworth Beach, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of Supreme Court of the State of Florida denying appellant's motion requesting that the Supreme Court of Florida vacate and set aside its order of July 27, 1977, which suspended appellant from the practice of law in the State of Florida. Appellant's motion, the denial of which constituted a final judgment of the matter, was denied by the Supreme Court of Florida on November 17, 1981. See Case No. 51,779, Supreme Court of the State of Florida.

This appeal is taken pursuant to 28 U.S.C. § 1257(2) with support from the decisions of Lathrop v. Donohue, 367 U.S. 820 (1960), and In re Griffiths 413 U.S. 717 (1972).

Roger Aldworth Beach

ROGER ALDWORTH BEACH, pro se
Mailing Address:
c/o Martin M. Beynon
7110 Campfield Road
Baltimore, Maryland
21207

Tel: 1-301-486-6659

CERTIFICATE OF SERVICE

I, ROGER ALDWORTH BEACH, the appellant in the case of Roger Aldworth Beach v. The Florida Bar, hereby do certify that I have personally mailed before 12:00 P.M., on January 11, 1982, at the North Calvert Street Postal Station at 111 North Calvert Street, Baltimore, Maryland 21202, a true and correct copy of the foregoing Notice of Appeal by U.S. mail, with first-class postage prepaid, to the Executive Director of the Florida Bar at the Florida Bar Center, Tallahassee, Florida 32304, and to the Clerk of the Supreme Court of Florida at the Supreme Court Building, Tallahassee, Florida 32301.

Roger Aldworth Beach

ROGER ALDWORTH BEACH, pro se

STATE OF Maryland

COUNTY OF Baltimore

ROGER ALDWORTH BEACH, appellant, being first duly sworn under oath, presents that he has read and subscribed to the above certificate of service and states that the information therein is true.

Roger Aldworth Beach

ROGER ALDWORTH BEACH, pro se

Subscribed and sworn to before me
this 12 day of Jan, 1982

Notary Public or other person
authorized to administer oath

Supreme Court of Florida

Tallahassee 32301

SID J. WHITE
CLERK
BERNICE L. SMILGIN
CHIEF DEPUTY CLERK

TELEPHONE
904-488-0125

January 18, 1982

Honorable Alexander L. Stevas
Clerk
United States Supreme Court
Washington, D. C. 20543

Re: The Florida Bar vs. Roger Aldworth Beach
Case No. 51,779

Dear Mr. Stevas:

Enclosed herewith please find certified copy of Notice of Appeal filed in this Court on January 13, 1982, in the above cause.

Most cordially,

Sid J. White
Clerk Supreme Court

SJW:dec
Enclosures.
cc: Mr. Roger Aldworth Beach
Stan Spring, Esquire

Supreme Court of Florida

TUESDAY, NOVEMBER 17, 1981

THE FLORIDA BAR,
Re: ROGER A. BEACH

CASE NO. 51,779

Upon consideration of the Motion Requesting that the Supreme Court of Florida Vacate and Set Aside its Order of July 27, 1977, Which Suspended Petitioner from the Practice of Law in the State of Florida filed by Roger Aldworth Beach,

IT IS ORDERED that said Motion be and the same is hereby denied.

SUNDBERG, C.J., ADKINS, OVERTON, ALDERMAN and McDONALD, JJ., concur
BOYD, J., dissents

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

TC
cc: Mr. Roger Aldworth Beach
Hon. Jim Smith
Hon. Lewis Kapner, Chief Judge

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, JULY 27, 1977

THE FLORIDA BAR *
*
Re: ROGER A. BEACH * CASE NO. 51,779
*
* * * * * * * * * * * * * * *

Roger A. Beach, having been adjudicated mentally incompetent by Circuit Judge Marvin Mounts on May 12, 1977, it is ordered that pursuant to Article II, Section 5, of the Integration Rule of the Florida Bar, Roger A. Beach is hereby suspended from the Florida Bar as of the date of this order.

OVERTON, C.J., ADKINS, BOYD, ENGLAND, SUNDBERG, HATCHETT and KARL, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

TC
cc: Elinor P. Smith, Esquire
Mr. and Ms. Beach

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR PALM BEACH COUNTY

CASE NO. 77-1170CF

STATE OF FLORIDA)
)
vs.)
)
ROGER A. BEACH,)
)

U-P

ORDER OF COMMITMENT

THIS CAUSE came on to be heard pursuant to the State's Motion for Emergency Hearing. The defense and State have joined in a Motion to Commit the defendant to the Department of Health and Rehabilitative Services, Division of Mental Health, pursuant to Rule 3.210, the Florida Rules of Criminal Procedure.

The Court disclosed to the attorneys for the parties that it had some prior knowledge of the question concerning the emotional and mental health of the defendant. Both sides indicated that they were aware of this and waived any objection thereto.

The State indicated that its chief concern was the security of the custody of Mr. Beach and the defense attorney represented that he was equally concerned about the place of such confinement and desired only that his client be afforded emergency admission into the State Hospital System.

The psychiatric evaluation by Dr. Rufus Vaughn is received into evidence and the parties have waived cross examination and authorized the Court to consider the report. Upon consideration, it is ORDERED and ADJUDGED that Roger A. Beach is mentally incompetent within the meaning of Rule 3.210, Florida Rules of Criminal Procedure and he is hereby committed to the Department of Health and Rehabilitat Services, Division of Mental Health pursuant to that Rule. The Mental Health Division of the Sheriff's Office has recommended to the Court that Mr. Beach be admitted to the State Mental Health Facility on an emergency and expedited basis and this Court authorizes

(E-A)

cause on Bk. 19 Pg. 83 page.

such a procedure and requests the cooperation of the authorities therein. At the request of the State of Florida, it is requested that the staff psychiatrist of the facility where Mr. Beach is received furnish this Court with an early psychiatric evaluation.

Both the Court and the Defendant have designated Leon St. John, Esquire, Comeau Building, 319 Clematis Street, West Palm Beach, Florida, to serve as the defendant's representantive under Florida Statute 394.459 (12).

It is requested that the Division of Mental Health examine the Defendant and furnish the Court with a written report stating:

(1) Whether there is substantial probability that the defandant will become mentally competent within the foreseeable future and,

(2) Whether progress toward that end is being made.

The defendant's attorney, Leon St. John, Esquire, as his representative shall file a report with this Court within the first six (6) months after hospitalization and each year thereafter stating what progress is being made in the treatment of his client.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 12th day of May, 1977.

SEAL

MARVIN MOUNTS, JR., Circuit Judge

copies furnished:

Attorney for Defendant
State Attorney
Sheriff of Palm Beach County
Director, Division of Mental Health

4 Certified Copies Sheriff
5/17/77 HH

320

Recorded in Bk. 19 Pg. 84

On the following page, i.e., page 6a, there is stated a portion of the text of Florida Statute 394.467(1) and Florida Statute 394.467(2). There is also a portion of the text of Florida Rule of Criminal Procedure 3.210. The important thing to note is that one, if he came under either the statute or the rule of criminal procedure, had to be examined by at least two experts. Appellant, as he has stated, was only examined by Doctor Rufus Vaughn M.D. before he, appellant, was found mentally incompetent which really means that under the law appellant was not found mentally incompetent at all!

Chapter 394, Florida Statutes:

Section 394.467 Involuntary hospitalization

(1) Criteria. - A person may be involuntarily hospitalized if he is mentally ill and likely to injure himself or others if not hospitalized.

(2) Admission to a treatment facility. - A patient may be hospitalized in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted for examination or evaluation. The hearing may be waived in writing by the patient. The recommendation must be supported by the opinions of two physicians who have personally examined the patient within the preceding five days that the criteria for involuntary hospitalization are met. . . . Laws of Florida, 1973.

Florida Rules of Criminal Procedure

Rule 3.210. Competence to Stand Trial: Procedure for Raising the Issue

(a) A person accused of a crime who is mentally incompetent to stand trial shall not be proceeded against while he is incompetent.

(b) If before or during the trial the court of its own motion, or upon motion of counsel for the defendant or for the State, has reasonable ground to believe that the defendant is not mentally competent to stand trial, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition, which shall be held no later than 20 days after the date of the filing of the motion, and shall order the defendant to be examined by no more than three now fewer than two experts prior to the date of said hearing. Attorneys for the State and the defendant may be present at the examination. Laws of Florida, 1981.

The stated portions of Article XI of the Integration Rule of the Florida Bar which are found on the following pages, i.e., page 8a-10a, show the due process procedures in Article XI. This is in contrast to Article II, Section 5 of the Integration Rule of the Florida Bar which has no due process procedures in it at all. In appellant's case, the Supreme Court of Florida did not take the trouble to find out whether or not appellant had been found mentally incompetent or involuntarily hospitalized under the Florida Mental Health Act. Had the court done so, it would have found that appellant did not come under Article II, Section 5 at all!

Article XI, Rule 11.01(4). Integration Rule of the Florida Bar:

Placement on inactive list for incapacity not related to misconduct. Whenever an attorney who has not been adjudged incompetent is incapable of practicing law because of physical or mental illness, incapacity or other infirmity, he may be placed upon an inactive list and shall refrain from the practice of law for such reason even though no misconduct on his part is alleged or proved. Proceedings with a view of placing the attorney on the inactive list under this section shall be processed under Article XI in the same manner as proceedings involving acts of misconduct. A member who has been placed on such inactive list may be readmitted upon application to and approval by the Board of Governors. A rejection of such petition may be reviewed by petition to the Supreme Court.

Article XI, Rule 11.04(1). Grievance Committee Function and Procedure. Integration Rule of the Florida Bar:

Purpose. The purpose and function of a grievance committee is to conduct investigations of alleged misconduct of a member of The Florida Bar justifying disciplinary action and to determine whether or not to make a finding of probable cause. A grievance committee may recommend discipline for minor misconduct.

Article XI, Rule 11.04(3). Grievance Committee Function and Procedure. Integration Rule of the Florida Bar:

The accused. The accused attorney may be required to testify and to produce evidence as any other witness unless he claims a privilege or right properly available to him under applicable federal or state law, and when so required he may be accompanied by counsel. Before any finding of probable cause or private reprimand is made, the accused shall be advised in general terms the nature of the conduct which is being investigated, and he shall be given an opportunity to make a statement personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. Unless found to be impractical by the chairman of the grievance committee due to unreasonable delay or other good cause, the accused shall be granted the right to be present at any grievance committee hearing when evidence is to

be presented to the committee, to face his accuser, to call witnesses, and to cross-examine, subject to reasonable limitation.

Article XI, Rule 11.06. Trial by Referee. Integration Rule of the Florida Bar:

When a finding has been made by a grievance committee or by the Board of Governors that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and the formal complaint based on such finding of probable cause has been assigned by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding in which the accused is the respondent and which shall be conducted as follows:

(1) Venue. The trial shall be held in the county in which an alleged offense occurred, or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the Supreme Court, provided, however, that if the respondent is not a resident of Florida and if the alleged offense is not committed in Florida, the trial shall be held in a county designated by the chief justice.

• • •

(3) Nature of proceedings

(a) Administrative in character. A disciplinary proceeding is neither civil or criminal but is a quasijudicial administrative proceeding. The Rules of Civil Procedure apply except as otherwise provided in the Integration Rule.

Article XI, Rule 11.09. Review by Supreme Court. Integration Rule of the Florida Bar:

All reports of a referee and all judgments entered in proceedings under these rules shall be subject to review by the Supreme Court in the following manner:

(1) Right of review. Any party to a proceeding may procure review of a report of a referee or a judgment, or any specified portion thereof, entered under the Integration Rule.

• • •

(3) Procedure for review. Review by the Supreme Court shall be in accordance with the following procedure:

(a) Proceedings for review shall be commenced within 30 days after the mailing date of a letter from the referee serving a copy of the referee report on the respondent and The Florida Bar. The proceeding shall be commenced by filing with the Supreme Court a petition for review, specifying those portions of the report of a referee sought to be reviewed. . . .

• • •

(f) Judgment of Supreme Court. After review, the Supreme Court shall enter an appropriate order or judgment. If no review is sought of a report of a referee entered under the rules and filed in the court, the findings of fact shall be deemed conclusive and the disciplinary measure recommended by the referee shall be the disciplinary measure imposed by the court, unless the court directs the parties to submit briefs or oral argument directed to the suitability of the disciplinary measure recommended by the referee. A referee report which becomes final when no review has been timely filed shall be reported in an order of the Supreme Court.

Article XI, Rule 11,10. Discipline by Supreme Court. Integration Rule of the Florida Bar:

• • •

(4) Suspension. The respondent may be suspended from the practice of law for an appropriate time or for a definite period of time and an indefinite period thereafter to be determined by the conditions imposed by the judgment. During such suspension the respondent shall continue to be a member of The Florida Bar but without the privilege of practicing; and upon the expiration of the suspension period and the satisfaction of all conditions accompanying the suspension, the respondent shall become eligible to all of the privileges of membership in The Florida Bar. A suspension of three months or less shall not require proof of rehabilitation or satisfactory passage of the Florida bar examination; a suspension of more than three months shall require proof of rehabilitation; no suspension shall be ordered for a specific period of time in excess of three years. Suspensions which continue for over three years shall require proof of rehabilitation and may require satisfactory passage of the Florida bar examination subsequent to the date of suspension.

The two motions on the following pages, i.e., page 12a-18a, were joined together when filed in the Supreme Court of Florida. Appellant had hoped to prove that he didn't have a valid mental illness, and that he had not been validly suspended from the practice of law. He failed on both counts without ever receiving a reason why his proof was not sufficient to sustain his allegations.

SUPREME COURT OF FLORIDA

CASE NO. 60,637

ROGER ALDWORTH BEACH,

Petitioner,

v.

LEWIS KAPNER,

Respondent.

MOTION REQUESTING THAT THE SUPREME COURT OF FLORIDA IMMEDIATELY ISSUE AN ORDER TO SHOW CAUSE OR A WRIT OF HABEAS CORPUS

COMES NOW, the petitioner, ROGER ALDWORTH BEACH, pro se, and moves the Supreme Court of Florida to immediately issue an order to the respondent directing him to show cause why a writ of habeas corpus should not issue in the above-styled case. In the alternative, petitioner moves the Supreme Court of Florida to issue a Writ of Habeas Corpus based upon irrebuttable grounds found in petitioner's original petition for writ of habeas corpus and petitioner's petition for rehearing and supplemental petition for writ of habeas corpus. One of those irrebuttable grounds is the following:

Petitioner is suppose to be suffering from a serious mental illness called schizophrenia schizoaffective type. The respondent says that this is true. He even wrote it on the first page of his order of October 10, 1979, in the case of State of Florida v. Roger Beach, CF 77-1170. His predecessor, Judge Marvin U. Mounts Jr., agreed that this was true. Judge Mounts wouldn't let petitioner out of a state mental hospital when the undereducated so-called physicians associated with the Department of Health and Rehabilitative Services of the State of Florida said that petitioner was suffering from this particular type of schizophrenia. However, on page 153 of an article

in the American Journal of Psychiatry in the February 1980 issue of that publication there is the following statement:

> "The DSM-III approach to defining Schizoaffective Disorder is unique in that eventually a consensus could only be reached on the inability to reach a consensus on a specific definition. Thus Schizoaffective Disorder is the only specific category in DSM-III without diagnostic criteria. The task force accepted the recommendation of a special committee that it appointed to review the category that there was no definition of the condition that seemed acceptable to most clinicians at the present time."

The article to which petitioner is referring, "DSM-III: The Major Achievements and an Overview", concerns the development of the third edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. See Spitzer, Williams & Skodol, DSM-III: The Major Achievements and an Overview: Am.J.Psychiat. 137:2, 151-163, p. 153, Feb. 1980. The development of this manual involved over 800 clinicians in a series of field trials. If they couldn't agree on a definition of the type of mental illness that petitioner is supposedly suffering from, then how could Judge Kapner, Judge Mounts, and the undereducated so-called physicians at the Department of Health and Rehabilitative Services agree on a definition of the type of mental illness that petitioner is supposedly suffering from? For that matter, how could Judge Kapner, Judge Mounts, and the same few undereducated so-called physicians at the Department of Health and Rehabilitative Services even agree that petitioner has some kind of a mental illness whatever it may be? According to the definition of schizophrenia found in the 1968 edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, petitioner didn't necessarily have to have delusions and hallucinations in order to be suffering from schizophrenia in 1968. However, according to the 1980 edition of the American Psychiatric Association's Diagnostic and Statistical Manual

of Mental Disorders, petitioner actually had to have had the delusions and hallucinations in 1980 or he wasn't suffering from schizophrenia in that year. Further, according to the 1980 edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, petitioner had to have had a disturbance or an impairment of at least six months before he could be considered to be suffering from schizophrenia. However, according to the 1968 edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, petitioner could be considered to be suffering from schizophrenia if he had a disturbance or an impairment for any length of time. Thus, if petitioner has a real disease, then why does the definition of the disease keep changing, or why isn't a new name invented for the new or different symptoms that supposedly designate the disease schizophrenia? In other words, why isn't a new disease invented? This leaves us with the unresolved issue of whether or not petitioner is suffering from schizophrenia 1968 style or schizophrenia 1980 style. In essence, it leaves us with the conclusion that petitioner isn't really suffering from any mental illness because the American Psychiatric Association has not yet decided what it is.

WHEREFORE, because of the above reasons, petitioner moves the Supreme Court of Florida to immediately issue an order to show cause or a writ of habeas corpus preventing the respondent from interfering in petitioner's life in any way whatsoever. The respondent has no jurisdiction over petitioner because by the respondent's own words in his order of October 10, 1979, in the case of State of Florida v. Roger Beach CF 77-1170, petitioner is suffering from a mental illness which petitioner has proved cannot be defined. Therefore, any delay in acknowledging that petitioner has his full constitutional and civil rights as a citizen of the United States is itself a denial of

petitioner's constitutional and civil rights.

Respectfully,

Roger Aldworth Beach

SUPREME COURT OF FLORIDA

CASE NO.

IN RE: ROGER ALDWORTH BEACH

MOTION REQUESTING THAT THE SUPREME COURT OF FLORIDA VACATE AND SET ASIDE ITS ORDER OF JULY 27, 1977, WHICH SUSPENDED PETITIONER FROM THE PRACTICE OF LAW IN THE STATE OF FLORIDA

COMES NOW, the petitioner, ROGER ALDWORTH BEACH, pro se, and moves the Supreme Court of Florida to vacate and set aside its order of July 27, 1977, which suspended petitioner from the practice of law in the State of Florida. Petitioner makes this motion on the ground that the order of July 27, 1977, is invalid. The following reasons are why this is true:

1. The order of July 27, 1977, is based upon the order of May 12, 1977, issued by Judge Marvin U. Mounts Jr. of the Circuit Court of the Fifteenth Judicial Circuit of Florida in the case of State of Florida v. Roger Beach, CF 77-1170.

2. The order of May 12, 1977, to which petitioner is referring, found petitioner incompetent upon the basis of only one physician's opinion. The Law of the State of Florida requires that two physicians find petitioner incompetent before petitioner is legally adjudicated as being incompetent. This is from the pertinent portion of Florida Statute 394.467(2) which is the following:

> 394.467 Involuntary hospitalization
>
> * * *
>
> (2) Admission to a treatment facility. - A patient may be hospitalized in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted

> for examination or evaluation. When a patient is not an inpatient in a receiving facility, the administrator of a designated receiving facility may make a recommendation for involuntary hospitalization of a patient who has been given an examination, evaluation, or treatment by staff of the receiving facility or a private physician. The hearing may be waived in writing by the patient. The recommendation must be supported by the opinions of two physicians who have personally examined the patient within the preceding 5 days that the criteria for involuntary hospitalization are met. . . .

3. The order of May 12, 1977, to which petitioner is referring, found petitioner incompetent when petitioner had been denied his right to independent expert examination as provided for by Florida Statute 394.467(3) which states in part:

> " . . . The patient and his guardian or representative shall be informed by the judge of the right to an independent expert (psychiatrist or psychologist) examination. . . ."

Thus, petitioner was denied his right to Due Process of Law as should have been his right according to the Fourteenth Amendment to the United States Constitution. Petitioner was not allowed to present any rebuttal witnesses to the allegation made by the one physician - a court appointed physician - that petitioner was incompetent.

4. The order of May 12, 1977, to which petitioner is referring, was issued after petitioner strongly objected to the counsel that Judge Mounts forced petitioner to have as petitioner's representative before the Circuit Court of the Fifteenth Judicial Circuit of Florida. Petitioner's objection is in the court record of his case. Therefore, the order of May 12, 1977, was issued after petitioner had been denied the effective assistance of counsel, petitioner's right according to the Sixth Amendment to the United States Constitution. See court record.

5. The motion to which this motion is attached shows that petitioner did not have a genuine mental illness. Therefore, petitioner could not have validly been declared incompetent. Thus, petitioner could not validly have been suspended from the practice of law in the State of Florida on the ground that he was incompetent.

WHEREFORE, because of the above reasons, petitioner moves the Supreme Court of Florida to vacate and set aside its order of July 27, 1977, suspending petitioner from the practice of law in the State of Florida on the ground that petitioner was incompetent. Petitioner was never validly adjudicated incompetent. Therefore, the Supreme Court's order of July 27, 1977, is invalid.

Respectfully,

Roger Aldworth Beach

Supreme Court of Florida

MONDAY, JULY 27, 1981

ROGER ALDWORTH BEACH,

Petitioner,

v.

LEWIS KAPNER,

Respondent.

CASE NO. 60,637

The petitioner in the above cause has filed a Petition for Writ of Habeas Corpus, and the same having been duly considered, it is ordered that said Petition be and the same is hereby denied.

ADKINS, BOYD, OVERTON, ALDERMAN and McDONALD, JJ., concur
SUNDBERG, C.J. and ENGLAND, J., would issue Order to Show Cause

Motion for a Temporary Injunction or in the Alternative a Motion for a Stay or a Temporary Restraining Order filed in the above styled cause is hereby denied.

ADKINS, BOYD, OVERTON, ALDERMAN and McDONALD, JJ., concur
SUNDBERG, C.J. and ENGLAND, J., dissent

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

TC
cc: Mr. Roger Beach
Hon. Jim Smith
Hon. Lewis Kapner, Chief Judge

No. 81-6220

RECEIVED
FEB 16 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

ROGER ALDWORTH BEACH, Appellant,

v.

THE FLORIDA BAR, Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

ROGER ALDWORTH BEACH, pro se
Mailing Address:
c/o Martin N. Beymon
7110 Campfield Road
Baltimore, Maryland 21207

Tel: 1-301-486-6659

RECEIVED
FEB 16 1982

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

COMES NOW, the appellant, ROGER ALDWORTH BEACH, pro se, and moves the United States Supreme Court to allow him to proceed in forma pauperis in his attempt to have the United States Supreme Court declare that appellant was not legally and validly suspended from the practice of law in the State of Florida. Appellant also wants the United States Supreme Court to cause appellant's readmittance to the roll of attorneys who are in the active practice of law in the State of Florida. Appellant makes this motion on the following grounds:

1. Appellant believes that he is entitled to be admitted to the roll of attorneys who are allowed to practice law in the State of Florida because he was never legally and validly suspended from the practice of law in the State of Florida by the Supreme Court of Florida. The language of the law is absolutely clear to this effect: Appellant was never legally and validly suspended from the practice of law.

2. Appellant is not only indigent, but he is absolutely destitute through no fault of his own. He has been - in his opinion - illegally incarcerated for more than two years during the past four and a half years, i.e., almost five years. Consequently, he has not been able to work, and at the present time - despite a great effort - he has not found work. Appellant, in reality, owes thousands of dollars. If he were a member of the Florida Bar in good standing, as he should be, he might have an easier time in finding work. Therefore, unless the Florida Bar or the Supreme Court of Florida has a good reason for keeping appellant from practicing law, appellant should be allowed to do just that!

3. In order to show that appellant was not legally and validly suspended from the practice of law in the State of Florida, and in order to show that appellant's right to the due process of law was violated when he was suspended from the practice of law in the State of Florida, appellant moves the United States Supreme Court to allow him to proceed in forma pauperis.

WHEREFORE, because of the above reasons, the appellant moves the United States Supreme Court to allow him to proceed in forma paueris.

Respectfully,

Roger Aldworth Beach

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

ROGER ALDWORTH BEACH, Appellant,

v.

THE FLORIDA BAR, Appellee.

RECEIVED
FEB 16 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

AFFIDAVIT IN SUPPORT OF MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

ROGER ALDWORTH BEACH, pro se
Mailing Address:
c/o Martin N. Beynon
7110 Campfield Road
Baltimore, Maryland 21207

Tel: 1-301-486-6659

AFFIDAVIT IN SUPPORT OF MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

I, ROGER ALDWORTH BEACH, being first duly sworn, depose and say that I am the appellant in the above-styled case of Roger Aldworth Beach v. The Florida Bar; that in support of my Motion For Leave To Proceed In Forma Pauperis in my attempt to be reinstated on the roll of attorneys who are in the active practice of law in the State of Florida, I state that because of my poverty I am unable to pay the cost of this proceeding or to give security therefore, and therefore I am requesting the privilege to proceed without being required to prepay fees, costs or give security for this proceeding. I most sincerely believe that I am entitled to redress, and that the issue which I desire to have resolved by my appeal is at least the following:

1. Whether Article II, Section 5 of the Integration Rule of the Florida Bar when used by the Supreme Court of Florida as the basis for the Court's order of July 27, 1977, authorizing appellant's suspension from the practice of law in the State of Florida was violative of appellant's rights under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States because the law of the State of Florida mentioned in Article II, Section 5 of the Integration Rule of the Florida Bar was not followed and appellant was not allowed any of those procedures inherent in the principle of due process of law with which he could have defended himself against the outrageous and scurrilous charge of mental incompetency and a possible continuation of a heinous incarceration in a state mental hospital.

I FURTHER SWEAR that the responses which I have made to the questions and instructions below relating to my ability to pay the

cost of considering my appeal are true.

1. Are you presently employed? -- "NO"

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

   "I was last employed in August of 1981. I received about $264.50 for two weeks work."

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? -- "Generally NO"

   "Only the term 'other source' applys."

   "I have received money from friends and relatives during the past twelve months so that I could have something to eat and a place to live. That's about it except for the $264.50 that I earned in New York City during the month of August 1981 when I worked for the Slavation Army Archives at 145 West 15th Street, New York City, New York."

3. Do you own any cash or checking or savings account? "NO"

   a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, ot other valuable property (excluding ordinary household furnishings or clothing)? "NO"

5. List the persons who are dependent upon you for support and state your relationship to those persons.

   "My parents who live in Palm Beach County, Florida, need me there to help them take care of their property. If I can get a court to issue an order enjoining the judges of the Circuit Court of the Fifteenth Judicial Circuit of Florida from illegally incarcerating me when I am in the State of Florida, I will help my parents." See Case No. 81-5612, United States Supreme Court.

I understand that a false statement or answer to any questions

in this affidavit will subject me to penalties for perjury.

Roger Aldworth Beach

ROGER ALDWORTH BEACH, Appellant

STATE OF Maryland

COUNTY OF Baltimore

I, ROGER ALDWORTH BEACH, the appellant in the above-styled cause of Roger Aldworth Beach v. The Florida Bar, do swear that my answers in the above affidavit in support of my motion for leave to proceed in forma pauperis are true.

Roger Aldworth Beach

ROGER ALDWORTH BEACH, Appellant

Subscribed and sworn to before me

this 16 day of January, 19 72

Notary Public or other person
authorized to administer oath

Motion to Dismiss or Affirm

JC KD

NO. 81-6220

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

RECEIVED
MAY 13 1982
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SUPREME COURT, U.S.

ROGER ALDWORTH BEACH,

Appellant,

vs.

THE FLORIDA BAR,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF FLORIDA

APPELLEE'S MOTION TO DISMISS AND/OR AFFIRM APPEAL

LARRY KLEIN
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(305) 659-5455

Counsel of Record for Appellee,
THE FLORIDA BAR

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NO. 81-6220

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

ROGER ALDWORTH BEACH,

Appellant,

vs.

THE FLORIDA BAR,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF FLORIDA

APPELLEE'S MOTION TO DISMISS AND/OR AFFIRM APPEAL

Appellee, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves to dismiss and/or affirm this appeal on the grounds that (1) the Florida Supreme Court lacked jurisdiction, and therefore this Court lacks jurisdiction, and (2) the Florida Supreme Court's order is so obviously correct that it warrants no further consideration by this Court.

PREFACE

The parties are referred to herein as appellant and appellee.

The following symbols are used:

A - Appellant's appendix

AA - Appellee's appendix

STATEMENT OF THE CASE AND FACTS

Appellant was arrested on May 7, 1977 and charged with attempted first degree murder and carrying a concealed firearm. The first degree murder charge was subsequently dismissed and the case proceeded to trial on the concealed firearm charge.

On May 12, 1977, the Circuit Court of Palm Beach County (Judge Marvin Mounts) declared appellant mentally incompetent to stand trial and recommended that he be committed to the State Mental Health Facility (A 3a-4a). Pursuant thereto and under the authority of Article II, Section 5 of the Integration Rule of the Florida Bar, the Florida Supreme Court suspended appellant from the practice of law on July 27, 1977 (A 2a).

The trial on the concealed firearm charge reconvened in December, 1977, at which time the court found appellant not

guilty by reason of insanity. The court committed him to guilty by reason of insanity. The court committed him to the Division of Mental Health in January, 1978. In October, 1979, the court (Judge Lewis Kapner) entered its order conditionally releasing appellant, providing he reside with his brother in Dade County, Florida (AA 1-2). Appellant violated this condition, resulting in the court's issuing a capias for his arrest.

On or about February 6, 1980, while said capias was outstanding, appellant applied to the Florida Bar for reinstatement. On August 12, 1980, the Board of Governors entered its order denying the petition because (1) appellant, who had notice of the hearing, failed to appear to present evidence in support of his petition and (2) appellant was in willful violation of Judge Kapner's order and a fugitive from an outstanding arrest warrant (AA 3-4).

Appellant took no further action until September 22, 1981, when he attached a motion to vacate and set aside the suspension order to a motion he filed in the Florida Supreme Court requesting an order to show cause or a writ of habeas corpus in the case pending before Judge Kapner (A 12a-18a). The Florida Supreme Court denied the motion to vacate on November 17, 1981 (A 1a). Appellant filed his notice of

appeal to this Court from said order on January 13, 1982 (A IV) and docketed his appeal in this Court on February 16, 1982 .

MOTION TO DISMISS APPEAL

The Integration Rules of the Florida Bar, administered by the Florida Supreme Court, govern the admission and discipline of attorneys admitted to practice in Florida. Under Article II, Section 5 thereof:

> A lawyer who has been adjudged insane or mentally incompetent or hospitalized under the Florida Mental Health Act shall be suspended from the practice of law. If an order of restoration is entered by a court having jurisdiction or the lawyer is discharged from hospitalization under the Florida Mental Health Act, he may apply to the Board of Governors for reinstatement on the roll of attorneys.

As the Rule indicates, suspension for mental incompetency is not a disciplinary matter governed by Article XI (which appellant sets forth on page 6 and argues throughout). It is a separate proceeding premised on an adjudication of mental incompetency or insanity under the Florida Mental Health Act. Once said determination is made the Florida Supreme Court must suspend the lawyer from the practice of law. If a court later enters an order of restoration or the lawyer is discharged from hospitalization under the Florida

Mental Health Act, he may apply for reinstatement to the Board of Governors.

Pursuant to this Rule, appellant applied for reinstatement in February of 1980, which the Board of Governors denied for various reasons in August of 1980.

At that time, the Integration Rules unequivocally state that the only method to obtain reinstatement following suspension for mental incompetency was by application to the Board of Governors, whose determination was then reviewable by the Florida Supreme Court under the procedure delineated in Article 11.09(3):

> (a) Proceedings for review shall be commenced within 30 days after the mailing date of a letter from the referee serving a copy of the referee report on the respondent and The Florida Bar. The proceeding shall be commenced by filing with the Supreme Court a petition for review, specifying those portions of the report of a referee sought to be reviewed. Within 10 days after service of such petition, the opposing party may file a cross-petition for review specifying any additional portion of the report which said party desires reviewed. The filing of such petition or cross-petition shall be jurisdictional as to a review to be procured as a matter of right, but the court may, in its discretion, consider a late-filed petition or cross-petition upon showing of good cause.

Appellant made no attempt to seek review of the Board's findings. In fact, appellant took no further action until

September of 1981, when he moved the Florida Supreme Court to vacate its prior suspension order. This motion was unauthorized under either the Integration Rule or the Florida Rules of Appellate Procedure; thus, the Florida Supreme Court properly denied it. As indicated above, appellant should have reapplied to the Board of Governors for reinstatement or timely sought review in the Florida Supreme Court of the Board's adverse determination. Even if a motion to vacate was proper as the equivalent of a motion for rehearing, appellant's motion was untimely as it was filed more than fifteen days after the Supreme Court's initial suspension order and the Board's subsequent denial of his petition for reinstatement. Fla.R.App.P. 9.330(a).

The Florida Supreme Court properly denied appellant's motion to vacate its previous suspension order since it was untimely. Accordingly, this Court should dismiss this appeal as the order from which the appeal is taken is not appealable.

MOTION TO AFFIRM APPEAL

The Florida Supreme Court's order is so obviously correct that it warrants no further consideration by this Court; consequently, the order appeled from should be affirmed.

Appellant contests the Florida Supreme Court's denial of his motion to vacate its previous suspension order on grounds that the mental incompetency finding, the basis of the suspension, was incorrect. Appellant maintains the court neglected to follow the procedures required under the applicable statute and Florida Rule of Criminal Procedure; therefore, the suspension was a nullity, entitling him to reinstatement.

Florida Rule of Criminal Procedure 3.210 delineates the procedure a court must follow when a defendant's competency is in issue. Appellant's initial competency hearing occurred in 1977. At that time, the Rule provided in pertinent part as follows:

> (a) At Time of Trial.
>
> (1) If before or during trial the court, of its own motion, or upon motion of counsel for the defendant, has reasonable ground to believe that the defendant is insane, the court shall immediately fix a time for a hearing to determine the defendant's mental

condition. The defendant shall designate his attorney to serve as his representative under Fla.State. § 394.459(11), F.S.A., in the event the defendant is found mentally incompetent. The court may appoint not exceeding three disinterested qualified experts to examine the defendant and to testify at the hearing as to his mental condition. Other evidence regarding the defendant's mental condition may be introduced at the hearing by either party.

(2) If the court decides that the defendant is sane, it shall proceed to trial.

(3) If the court decides that the defendant is insane, it shall commit him or her to the Division of Mental Health for hospitalization under the provisions of Fla.State. § 394.467, F.S.A. The order of commitment shall request that the defendant be examined and a written report be furnished the court, stating (1) whether there is a substantial probability that the defendant will become mentally competent to stand trial within the foreseeable future and, if so, (2) whether progress toward that goal is being made. The defendant's attorney, as his representative, shall not waive any hearing authorized by Fla.Stat. Ch. 394, F.S.A., and shall file a report with the court within the first six months after hospitalization and each year thereafter stating what progress, if any, is being made in the treatment of defendant. Such representative shall be authorized to consent, on behalf of defendant, to necessary surgical or medical treatment and procedures. If at any time the Division of Mental Health shall consider that the defendant is mentally competent to stand trial, the proper officer of the institution where defendant is hospitalized shall promptly notify the court to that effect in writing and place the defendant in the custody of the sheriff. The court shall thereupon conduct a hearing on the mental competency of the defendant. * * *) (Emphasis added)

Under the Rule, if a court or defense counsel has reasonable grounds to believe defendant is insane, it must immediately

set a hearing to determine defendant's competency at which not more than three disinterested court-appointed qualified experts will testify to defendant's mental condition. If the court finds defendant is insane, it must commit him to the Division of Mental Health for hospitalization under Section 394.467, Florida Statutes (1977).

The applicable portions of Section 394.467, Florida Statutes (1977) provided as follows:

> (a) A person who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily hospitalized pursuant to such finding if he is mentally ill and, because of his illness, is manifestly dangerous to himself or others.
>
> (b) Any other person may be involuntarily placed if he is mentally ill and, because of his illness, is:
>
> 1. Likely to injure himself or others if allowed to remain at liberty, or
>
> 2. In need of care or treatment which, if not provided, may result in neglect or refusal to care for himself, and such neglect or refusal poses a real and present threat of substantial harm to his well-being.
>
> (2) Admission to a treatment facility. - A patient may be involuntarily placed in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted for examination or evaluation. When a patient is not an inpatient in a receiving facility, the administrator of a designated receiving facility may make a recommendation for involuntary placement of a patient who has been given an examination, evaluation or treatment by staff of the receiving facility

> or a private mental health professional. The hearing may be waived by express and informed consent in writing by the patient. The recommendation must be supported by the opinions of two mental health professionals, at least one of whom shall be a physician, who have personally examined the patient within the preceding 5 days that the criteria for involuntary placement are met. Such recommendation shall be entered on an involuntary placement certificate, which certificate shall authorize the receiving facility to retain the patient pending transfer to a treatment facility or completeion [sic] of a hearing. * * *

Under this statute, a person adjudged mentally incompetent could not be involuntarily (committed) hospitalized unless the administrator of the facility to which he had been admitted for evaluation so recommended. His recommendation must be supported by the opinions of "two mental health professionals, at least one of whom shall be a physician," who had personally examined the patient. As the statutes clearly indicated, these procedures applied to the actual commitment and not to the initial determination of incompetency, which was governed by Florida Rule of Criminal Procedure 3.210.

Regarding the validity of Judge Mounts' May 12, 1977, commitment order, the determinative question then, is whether it complied with the mandates of Rule 3.210. As noted above, that Rule required that not more than three disinterested court-appointed qualified experts testify as

to the defendant's mental condition. The court's order reflects that one physician, Dr. Rufus Vaughn, evaluated appellant and found him incompetent. Based on Dr. Vaughn's report, the court adjudged appellant incompetent. This complied with the Rule.

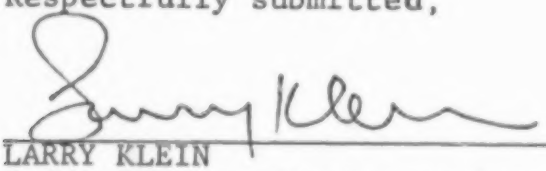
Appellant's argument might have some validity if he were challenging the actual commitment order since then the opinions of two mental professionals would be required under the statute. Only the incompetency determination is relevant to the suspension, however, and that necessitated only one expert's testimony. The commitment order (involuntary hospitalization) about which appellant really complains, was not the basis of his suspension.

The record reflects sufficient evidence to support the lower court's compliance with Rule 3.210 and eventual finding of incompetency. Pursuant to this determination, the Florida Supreme Court properly suspended appellant from the practice of law and properly denied his subsequent motion to vacate the suspension. Accordingly, the order appealed from should be affirmed.

CONCLUSION

This appeal should be dismissed and/or, in the alternative, the Florida Supreme Court's order denying appellant's motion to vacate his suspension from the practice of law should be affirmed.

Respectfully submitted,



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(305) 659-5455

Counsel of Record for Appellee,
THE FLORIDA BAR

NO. 81-6220

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

ROGER ALDWORTH BEACH,

Appellant,

vs.

THE FLORIDA BAR,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF FLORIDA

APPELLEE'S APPENDIX

LARRY KLEIN
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Counsel of Record for Appellee,
THE FLORIDA BAR

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Grievance Minutes	AA 1-2
Recommendation of The Florida Bar in Opposition to Reinstatement	AA 3-4

3. Miscellaneous, (continued)

A. Permanent Resignation Petition

The Florida Bar v. James B. Owens, (continued)

Disciplinary Review Committee
For _____ Against _____

Prior Board Action and Date:

Board Action: The Board voted to approve and accept a permanent resignation in lieu of further action.

B. The Florida Bar v. Roger A. Beach
Case No. FRE80001

Age: 37
Date of Admission: May 22, 1975
Area of Practice: West Palm Beach, Florida
Designated Area of Practice: None
Law Firm: None
Prior Discipline: None
Pending Complaints: None
Designated Reviewer: John L. Burns
Branch Staff Counsel: Lance J. Thibideau
Bar Counsel: Lance J. Thibideau
Referee: N/A
Respondent's Counsel: N/A
Complainant: The Florida Bar

Summary: Petition for reinstatement pursuant to Florida Bar Integration Rule, By-laws article II, Section V.

Petitioner Beach was suspended July 17, 1977 pursuant to Florida Bar Integration Rule, article II, Section V.

The acts leading to Petitioner's suspension are as follows:

On May 7, 1977, Petitioner was arrested when he attempted to carry a loaded firearm into a meeting he had arranged with Congressman Paul Rogers. Petitioner was charged with attempted first degree murder and carrying a concealed firearm.

The charge of attempted first degree murder was dismissed; the charge of carrying a concealed firearm proceeded to trial.

On or about May 12, 1977, after several hearings the Petitioner was found incompetent to stand trial end was committed to the Department of Health and Rehabilitative Services.

3. Miscellaneous (continued)

B. The Florida Bar v. Roger A. Beach, (continued)

The trial was reconvened in December, 1977, at which time Petitioner was found not guilty by reason of insanity and committed to the Division of Mental Health in January, 1978.

In October, 1979, Judge Lewis Kapner held a hearing which resulted in Petitioner's conditional release. One of the conditions of the release was that Petitioner reside with his brother in Dade County, Florida. Petitioner has violated this condition of his release and his whereabouts are presently unknown.

Judge Kapner, upon being informed of Petitioner's violation of the conditional release issued a capias for Petitioner's arrest. The capias for Petitioner's arrest is presently outstanding.

Petitioner was given notice of the grievance committee hearing to consider his petition for reinstatement by certified and regular mail. Petitioner failed to appear or to proffer any reasonable explanation for his absence. No evidence to support Petitioner's Petition for Reinstatement was offered to the Grievance Committee for consideration.

Violations: N/A

Discipline Received in Similar Cases in Recent Past: N/A

Recommendations:
Grievance Committee: Opposed reinstatement

Referee: N/A

Staff Counsel: Opposed reinstatement.

Designated Reviewer: Opposed reinstatement.

Disciplinary Review Committee
For_____Against_____

Prior Board Action and Date: N/A

Board Action: The Board voted to oppose and deny reinstatement.

C. The Florida Bar v. Thomas B. Walker
Case No. 1078001

Age: 62
Date of Admission: June 4, 1941
Area of Practice: Winter Haven
Designated Areas of Practice: None

AA-2

Fsb Board

RECEIVED
13 Rec'd
THE FLORIDA BAR

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

RE: ROGER A. BEACH,

PETITIONER.

CASE NO. _____
(Petition for Reinstatement - FRE80001)

RECOMMENDATION OF THE FLORIDA BAR
IN OPPOSITION TO REINSTATEMENT

Pursuant to Florida Bar Integration Rule Bylaws, article II, Section 5, (1980), this cause is before the Board of Governors of The Florida Bar for a review of the petition, the findings and recommendations of the Fifteenth Judicial Circuit Grievance Committee "E", and the record before the circuit grievance committee, to determine whether it shall support or oppose reinstatement of the Petitioner to The Florida Bar.

The circuit grievance committee held a formal hearing, received testimony and documentary evidence and recorded a vote on the Petition for Reinstatement. The circuit grievance committee recommends that the Petition for Reinstatement be denied.

The circuit grievance committee determined that the burden of proving entitlement to reinstatement rested with the Petitioner. The Petitioner did not appear at the circuit grievance committee meeting to testify or present evidence in support of his petition, although he had been given notice of the hearing.

Additionally, during the course of its investigation, the circuit grievance committee determined that Petitioner was in willful violation of a circuit court order and as such is the subject of an arrest warrant and a fugitive from justice. The findings by the circuit grievance committee is fully justified by the record and support their conclusions and recommendation.

AA-3

THEREFORE, the Board of Governors of The Florida Bar has adopted, ratified and confirmed the circuit grievance committee's findings and conclusions, and joins in its recommendations as follows:

1. That the Petition for Reinstatement be denied.
2. That the costs of this proceeding be taxed against the Petitioner in the amount of $220.50.

Respectfully submitted,

Lance J. Thibideau
Assistant Staff Counsel
The Florida Bar
533 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(305) 462-5838

and

James P. Hollaway
Deputy Staff Counsel
The Florida Bar
Tallahassee, FL 32304
(904) 222-5286

By: James P. Hollaway
JAMES P. HOLLAWAY

CERTIFICATE OF SERVICE

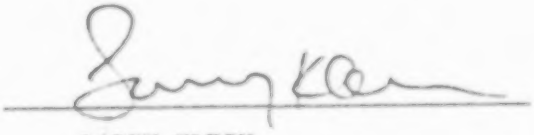
I HEREBY CERTIFY That a Copy of the Above Recommendation Opposing Reinstatement has been forwarded to Roger A. Beach at his address of 233 Island Road, Riviera Beach, Florida, by certified mail #29897, RRR, on this 12th day of August, 1980.

James P. Hollaway
JAMES P. HOLLAWAY

AA-4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy hereof has been furnished, by mail, this 11th day of May, 1982, to ROGER ALDWORTH BEACH, pro se, c/o Martin N. Beynon, 7110 Campfield Road, Baltimore, Maryland 21207.



LARRY KLEIN